



ICN

Unilateral Conduct Workshop

March 7(Tue)–8(Wed), 2023 Tokyo

Venue : InterContinental Tokyo Bay



Plenary 5

*Current and future issues
for competition enforcers*

8 March 2023

María Pilar Canedo

Comisión Nacional de los Mercados y
la Competencia

•Topics



INTERNA

Energy

Mexico:

- **José Manuel Haro**, Head of the Investigative Authority, Federal Economic Competition Commission
 - 5 mins

Portugal:

- **Maria João Melícias**, Board Member, AdC
 - 5 mins

Spain:

- **María Pilar Canedo**, Board Member CNMC
 - 5 mins





INTERNA

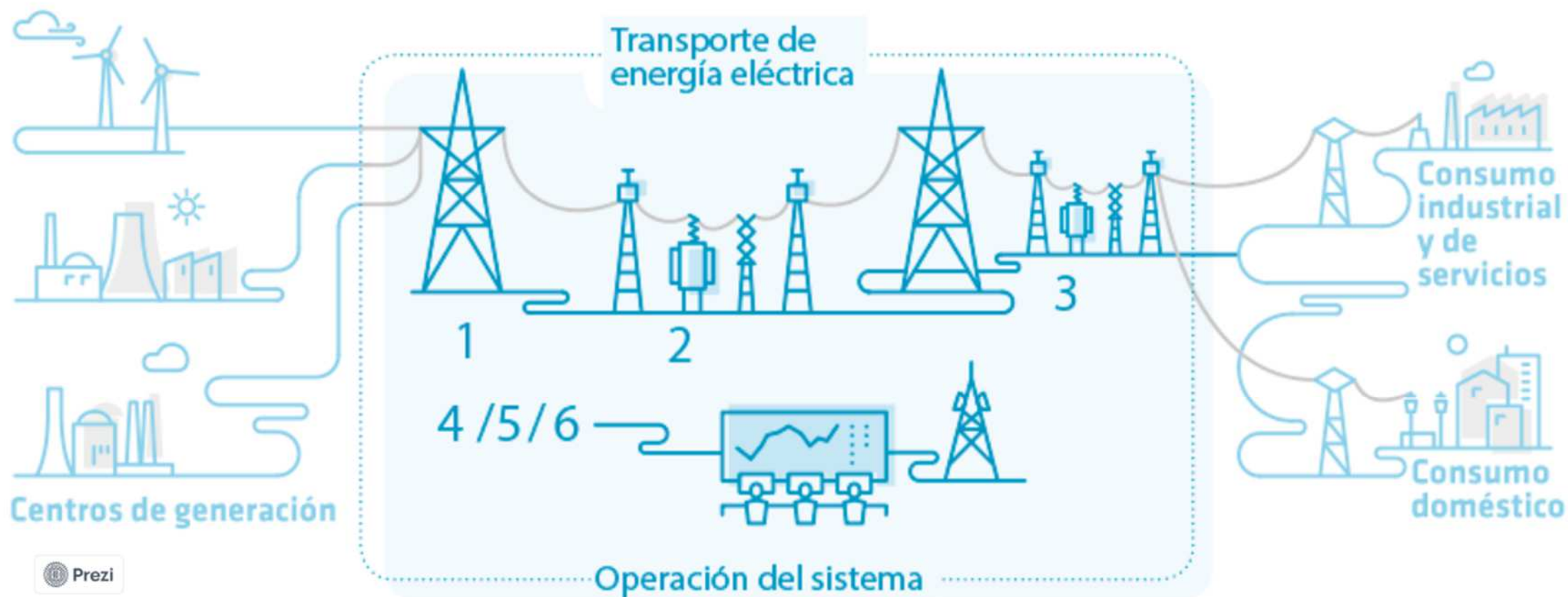
ENEL GREEN POWER ESPAÑA

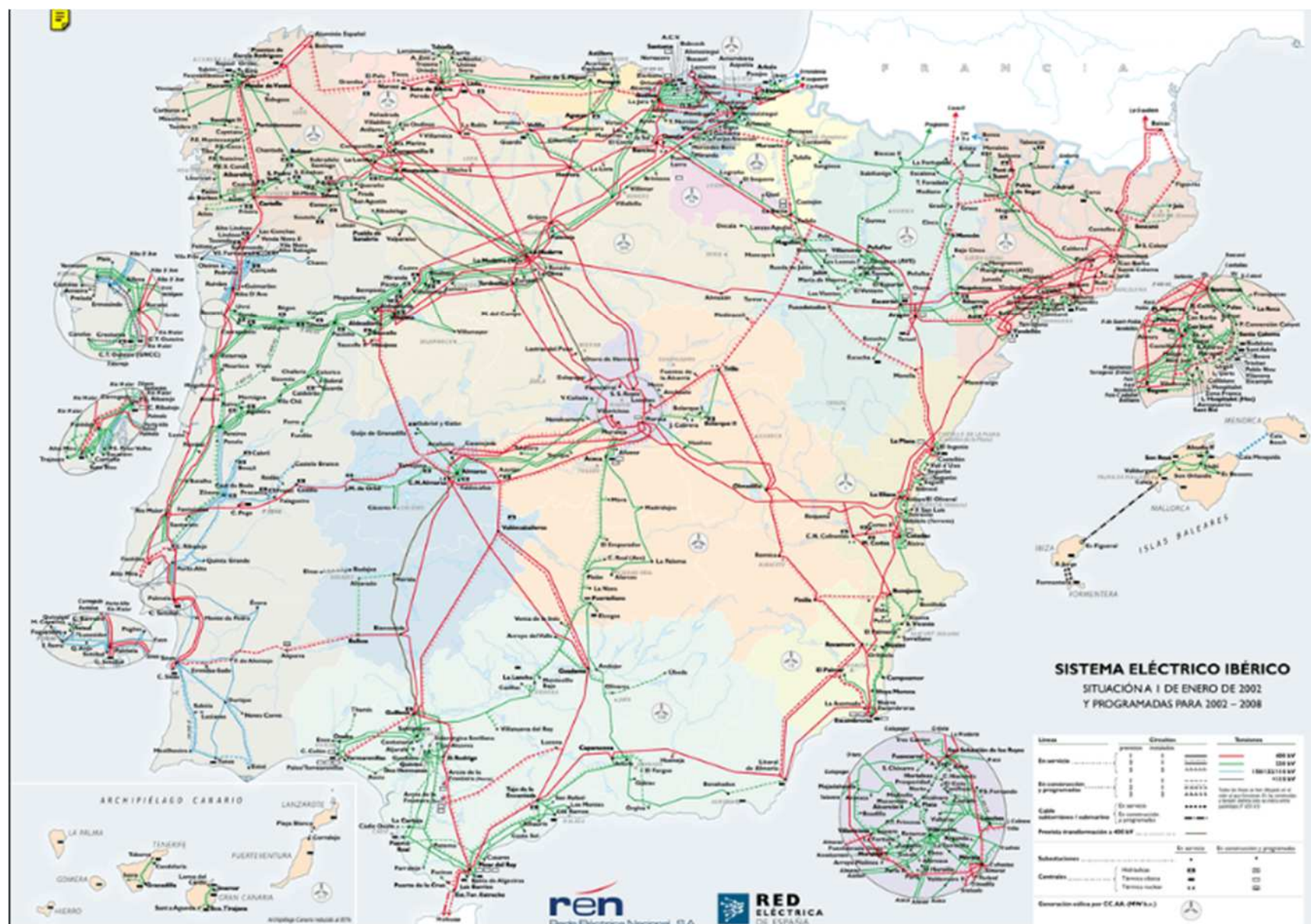
S/0022/20

10th June 2022











INTERNA



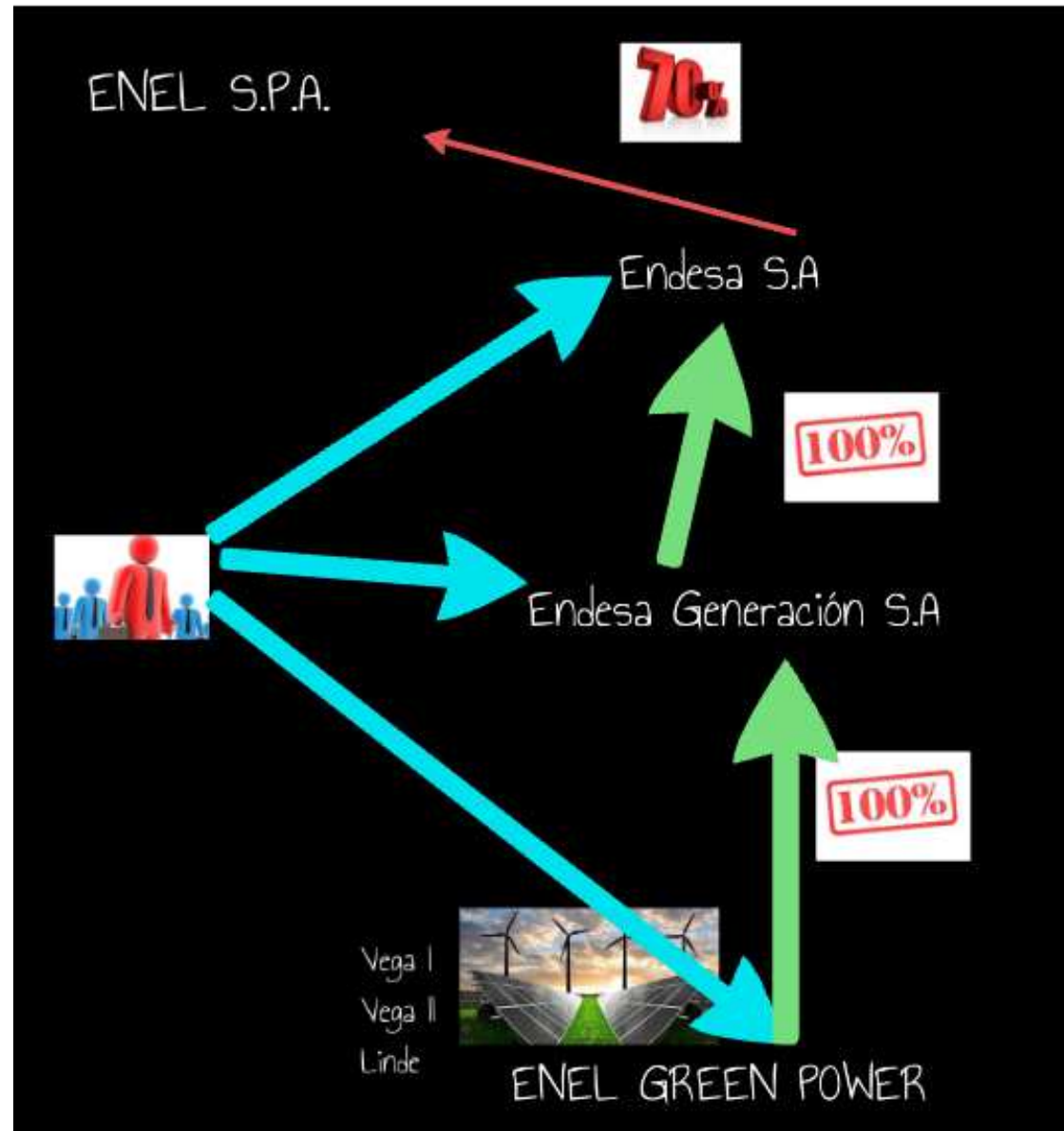
Unique Knot responsible

Who designates?

How?

What for?

Collect the documents of the requests
of capacity
Consolidate close requests
Send them to REE



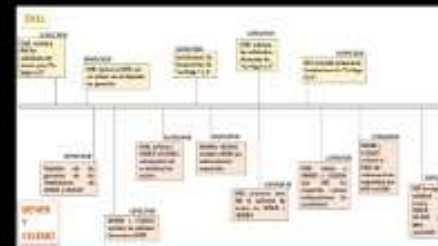
Vega I
Vega II
Linde



ENEL GREEN POWER

TAJO DE LA ENCANTADA

220 kV
Andalucía

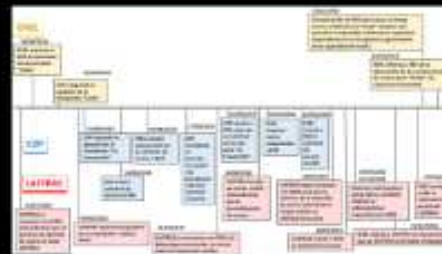


ENEL GREEN POWER ESPAÑA

Linde
Vega
Vega II

Lastras

400 kV Castilla
y León



ENEL

31/01/2018

ENEL remite a REE las solicitudes de acceso para "La Vega I y II"

12/03/2018

ENEL subsana las solicitudes de acceso de "La Vega I y II"

05/04/2018

REE concede acceso a las instalaciones de "La Vega I y II"

08/02/2018

REE requiere a ENEL por no contar con el depósito las garantías

01/03/2018

Certificación de las garantías de "La Vega I" y II"

23/02/2018

ENEL solicita a DENEY y CELENO subsanación de su solicitud de acceso

02/03/2018

DENEY y CELENO remiten a ENEL las subsanaciones requeridas

09/02/2018

Depósito de las garantías de las instalaciones de DENEY y CELENO

13/03/2018

ENEL presenta ante REE la solicitud de acceso de DENEY y CELENO

11/04/2018

ENEL indica a DENEY y CELENO que REE ha requerido nuevas subsanaciones de su solicitud

17/04/2018

DENEY y CELENO remiten a ENEL las subsanaciones requeridas por REE vía ENEL

23/05/2018

REE deniega la solicitud de acceso de DENEY y CELENO por falta de capacidad

**DENEY
Y
CELENO**

ENEL

01/08/2018

ENEL presenta a REE las solicitudes de acceso para "Linde"

03/08/2018

ENEL deposita la garantía de la instalación "Linde"

23/11/2018

Comunicación de REE por la que se otorga acceso condicional a "Linde" siempre que actualice la capacidad solicitada a la capacidad disponible (con el consiguiente agotamiento de la capacidad del nudo)

12/03/2019

ENEL informa a REE de la adecuación de sus pretensiones de acceso para "Linde" a la capacidad disponible

EDP

13/08/2018

EDP deposita la garantía de la instalación "La Fuentecilla"

16/08/2018

ENEL solicita subsanación de su solicitud de acceso a EDP

17/08/2018

EDP manifiesta su posición en cuanto a la procedencia de una solicitud conjunta.

22/08/2018

EDP remite a REE copia de su solicitud de acceso para "La Fuentecilla"

05/09/2018

ENEL requiere nueva subsanación a EDP

10/09/2018

ENEL remite a REE la solicitud de acceso de EDP

14/08/2018

EDP remite solicitud de acceso a ENEL

30/08/2018

LASTRAS escribe de nuevo a ENEL interesándose por el procedimiento de acceso

14/09/2018

LASTRAS logra contactar con ENEL para que le informe de la dirección de correo electrónico a la que remitir su solicitud de acceso

19/09/2018 - 22/10/2018

Distintos intercambios entre ENEL y LASTRAS relativos a subsanaciones requeridas por ENEL

26/10/2018

ENEL remite a REE la solicitud de acceso de LASTRAS

LASTRAS

31/07/2018

LASTRAS se comunica con ENEL interesándose por el proceso de solicitud de acceso al nudo LASTRAS

09/08/2018

LASTRAS deposita la garantía de su instalación "Lastras Solar"

21/08/2018

LASTRAS se comunica con ENEL vía WhatsApp anunciando una duda sobre los esquemas unifilar

18/09/2018

LASTRAS remite a ENEL su solicitud de acceso

23/10/2018

ENEL solicita a LASTRAS un documento que ya LASTRAS ya le había entregado

REE recognizes capacity to the ENEL projects

The competitors present conflicts of Access at the regulator

- DENEBA y CELENO CFT/DE/028/18
- Lastras CFT/DE/002/19 y CFT/DE/013/19

The adjudication of capacity is declared void

Feedback of action

Regulatory decisions confirmed by the Courts

Regulatory body



**COMPETITION
AUTHORITY**

INTERNA

Two abuses of dominance of Enel

Sanctions

4.000.000 € Tajo de la Encartada

900.000 € Lastras

Digital

India:

- **Bidyadhar Majhi**, Adviser (Eco) Competition Commission
 - 15 mins

Portugal:

- **Maria João Melícias**, Board Member, AdC
 - 7 mins

Mexico:

- **José Manuel Haro**, Head of the Investigative Authority, Federal Economic Competition Commission
 - 5 mins





INTERNA



Other topics

Portugal:

- **Maria João Melícias**, Board Member, Portugal's Competition Authority (AdC)
- 3 mins

Mexico (liberalization):

- **José Manuel Haro**, Head of the Investigative Authority, Federal Economic Competition Commission, Mexico
- 5 mins

India:

- **Bidyadhar Majhi**, Adviser (Eco) Competition Commission
- 3 mins

Spain:

- **María Pilar Canedo**, Board Member CNMC
- 10 mins

INTERNA



INTERNA





Sanction of 10,25 millions

Excessive pricing

Abuse of dominance

14 Nov 2022

- Exclusive distributor for the medicine treating **XCT** (medicine).

- 200 to 250 patients in Europe, **50 in Spain.**

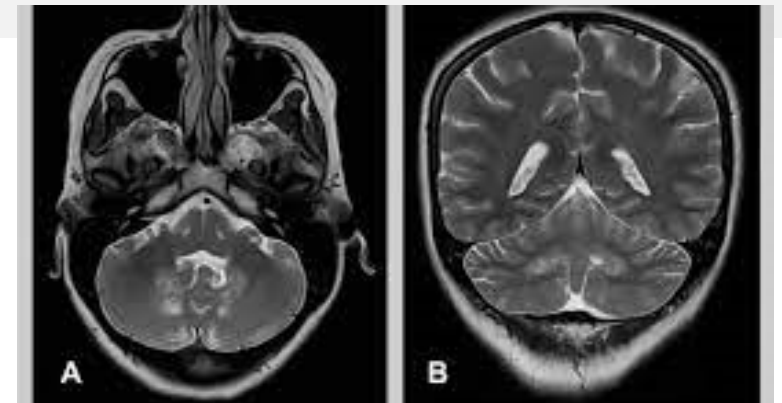




- **XCT** is an ultra rare metabolic disease

- Since decades it is treated with medicines based on **CDCA** as active substance.

- It slows the progression of the disease and stop some of the main symptoms.



- Leadiant has been the exclusive distributor of drugs based on CDCA in Spain since 2010.
- First Xenbilox[®] and, since 2017, CDCA-Leadiant[®].
- Leadiant obtained the exclusivity of the supply **active substance** in which the medicine was based and therefore avoided alternative products to develop.

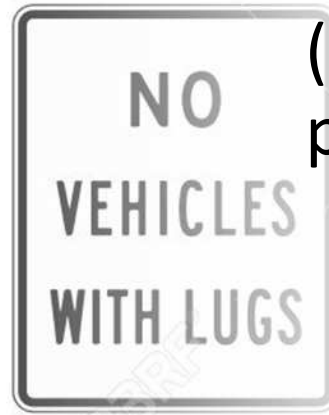
1. Acquisition of the competitors distributing the drug
2. Agreements of cooperation with



3. Exclusivity agreement with the producer of the active principle
4. Challenge of the Master forms in some local pharmacies
4. Declaration as orphan drug
5. Removal of Xenbilox (former drug)
6. Creation of a new brand (CDCA-Leadiant)
7. Increase in price of CDCA Leadiant

Price per box 100 pills
Including distribution cost





- Exclusionary behavior
 - Exclusivity agreements with reference medical centers
 - Exclusivity agreement with PCA (active substance producer)

Exploitative behavior



- Delay in the internal production
- Import of the product as foreign medicine
- Negotiation with Spanish Social Security

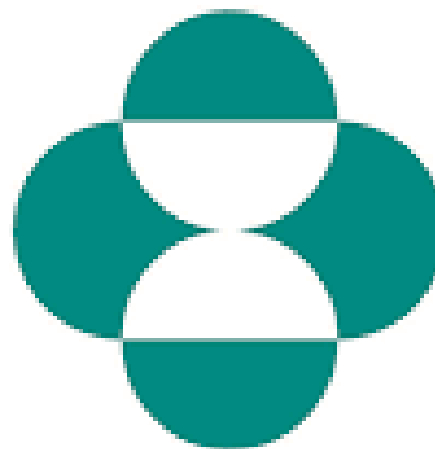


REMEDIES AND COMMITMENTS IN ABUSE CASES

OECD Competition Policy Roundtable, Belgium, 2016

-
- Obligation to commercialize the product with no excessive price
 - Obligation to raise the exclusivity clause with the producer of the active principle

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MSD


INSUD PHARMA

Sham litigation

Is the new ring a
breach of the
patent??



FACTS

- First vaginal ring sold in Spain
- MSD enjoyed a monopoly from 2002 to 2018
- Holder of a Patent that protected the Nuvaring contraceptive.
- Insud Pharma (competing company) had developed an alternative vaginal ring
- Began to be marketed in June 2017 under the name Ornibel.



- MSD requested that Barcelona Mercantile Court paralyze the manufacture and sale of the Ornibel ring in Spain.
- Invoked
 - its patent right,
 - reasons of urgency,



- The CNMC considers it proven that, both when requesting the fact-checking procedure and the subsequent precautionary measures, MSD deployed a strategy of deception from the judicial body, hiding relevant factual and technical information from it.
- The lack of transparency in the information provided during this process was a determining factor in obtaining the requested precautionary measure, paralyzing the marketing and sale of the Ornibel between September and December 2017.



- It is considered proven that the objective of the legal actions undertaken
- was not to assert their patent rights,
- but rather that they were exercised
- within the framework of a plan
- whose purpose was to suppress the competition of the new entrant for as long as possible.

The Order of the Mercantile Court No. 5 of Barcelona expressly declares :

[...] Undoubtedly, from a procedural point of view, it is quite artificial to request a fact-checking procedure in June; and before the deadline (September 22) for the judicial expert to issue her report - and ignoring her conclusions? – the plaintiff requests precautionary measures (September 11) accompanied by an expert report of the same dates and which is later extended with another dated October 26; and where, in both reports, the basis for the conclusion on the controversial fact are documents that were previously available, that is, in June 2017 [...].

Even more so, when all the evidentiary and judicial facilities have been available to the plaintiffs at all times:

it would have been natural to have addressed the initial request for fact-checking procedures to obtaining from LF directly - and not through the AEMPS - not only the technical information on the rings but also a sample their physical nature, it would have been logical to wait for the result of the report on the fact-checking procedures; It would have been pertinent and prudent, before requesting precautionary measures, in any case, to have requested other verification procedures to obtain a sample from the manufacturer of the polymer for LF, DSM Medical.

We even have the doubt that with the LF ring being on the market, in September, being commercialized, it would not have been possible to carry out the tests or price tests by acquiring / buying a sample (certainly, the experts contradict themselves on this point).



